

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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BURVIN STEVENSON,

Plaintiff,

v.

GEORGE PRAMSTALLER and  
CRAIG HUTCHINSON,

Defendants.

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Case No. 1:05-CV-724

Hon. Richard Alan Enslen

**JUDGMENT**

This matter is before the Court to review United States Magistrate Judge Ellen S. Carmody's Report and Recommendation of May 22, 2006 and Defendant Craig Hutchinson's Objections to the Report and Recommendation. These matters are reviewed *de novo* in accordance with 28 U.S.C. § 636(b)(1)(B).

Defendant Hutchinson's Objection is an unusual one in that Defendant does not object to the dismissal *per se*, though he does object to the reasoning for the dismissal. The Report and Recommendation determined that claims against Defendant Hutchinson (an employee of Correctional Medical Services ("CMS"), a contracting medical agency) are not subject to administrative exhaustion, but nevertheless should be dismissed under the Sixth Circuit Court of Appeals' total exhaustion rule. Defendant Hutchinson believes that dismissal is proper, but further asserts that claims against CMS and CMS employees are subject to exhaustion such that the claims against Hutchinson should be deemed unexhausted *per se*.

This Court concurs with the Objection. This Court has previously rejected the application of the Circuit's "total exhaustion rule" while the Supreme Court has pending cases on appeal

attacking such rule. *See Porter v. Caruso*, No. 1:05-cv-562, – F. Supp. 2d – , 2006 WL 1233150 (W.D. Mich. 2006). Nevertheless, the Court also knows from its experience with the case of *Hadix v. Caruso*, 4:92-cv-110 (W.D. Mich.), that CMS (including Dr. Hutchinson) have long functioned as contract medical providers for the State of Michigan subject to the grievance exhaustion process of the State (precisely because the State has influence over CMS due to the contracting process). (*See* Objection 5 (citing cases).) As such, dismissal of Defendant Hutchinson for failure to exhaust claims against him directly is most appropriate.

**THEREFORE, IT IS HEREBY ORDERED** that Defendant Hutchinson’s Objection (Dkt. No. 54) is **GRANTED**, the Report and Recommendation (Dkt. No. 52) is **MODIFIED**, Defendants’ Motions to Dismiss (Dkt. Nos. 23 & 34) are **GRANTED**, and all claims are **DISMISSED WITHOUT PREJUDICE**, due to lack of exhaustion of administrative remedies.

DATED in Kalamazoo, MI:  
June 19, 2006

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE